IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 6149/2002

BHEROON SINGH MEENA Vs. STATE OF RAJASTHAN & ORS.

DATE: 06.07.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Shankar Lal Sharma for
Mr. Suresh Pareek for the petitioner.
Mr. B.S. Chhaba, Addl. GA for the State.
Ms. Renu Agrawal for
Mr. Ram Kumar Sharma for the respondents.

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This writ petition is directed against the oral termination of the petitioner alleged to be passed on 26.04.2000. As per the petitioner, he was appointed in the Bharatpur Central Co-operative Bank Ltd. on 16.09.96 and since then he is discharging his duties as Class IV employee. Initially he was paid Rs. 32/- per day and thereafter he was paid Rs. 44/- and Rs 50/- per day and at the time of his oral termination he was getting Rs. 60/- per day.

It is also submitted by the petitioner that he had worked with the respondent Bank for more than 240 days and while orally terminating the petitioner, the respondent Bank has not complied with the provisions of Sections 25-B, 25-F and 25-H of the Industrial Disputes

Act, 1947. Thus, the oral termination of the petitioner is contrary to the provisions of law and without following the due process of law. Even he has not been afforded opportunity of being heard. The petitioner also submitted a photocopy of the muster roll to show that he has attended the office of the respondent Bank and worked there as Class IV employee.

Per contra, learned counsel appearing for the respondent Bank has submitted that the petitioner was neither given appointment on 16.09.96, as alleged by him, nor his termination order has been passed by the respondent Bank. It is not disputed that in the urgent need of the work the petitioner was engaged as class IV daily rated employee on the muster roll basis and has not completed 240 days.

It was further stated in the reply that the petitioner has not availed the alternative efficacious remedy available to him under Section 58 of the Rajasthan Co-operative Societies Act, 2001 to raise the dispute.

The petitioner in this writ petition has invoked the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. This Court, while exercising extra ordinary powers under Article 226 of the Constitution of India, cannot

adjudicated upon the disputed question of facts as the appointment as well as the termination order has been vehemently denied by the respondent Bank. Neither the petitioner was appointed nor his services have been terminated, though he was engaged as class IV employee for certain period on daily rated basis due to urgency of the work., but he was never appointed by the competent authority of the respondent Bank.

It is also alleged that the petitioner in collusion with some of the bank officials at Bari Branch has fraudulently entered his name in the attendance register meant for the regular employees of the bank and has marked presence therein. It further submitted that by mere entering his name does not get entitle the petitioner service of the bank which was not approved and counter singed by the bank authorities.

It is also empathetically denied that the petitioner had worked for more than 240 days, therefore, the question of violation of the provisions of Sections 25-B- 25-F and 25-H of the Industrial Disputes Act does not arise.

I have heard rival submissions of the respective parties.

[4]

Both the parties have raised several disputed question of facts in the writ petition. As regards first and foremost point with regard to appointment, the petitioner has not been able to place any appointment order issued by the respondent Bank and has only placed the photocopy of the muster roll, which indicates that the petitioner had worked for a certain period as daily rated employee and while exercising extra ordinary powers under Article 226 of the Constitution of India, such disputed question of facts which are raised here in the writ petition by the petitioner, cannot be verified and adjudicated upon as the petitioner has not chosen to avail the alternative efficacious remedy available to him and has directly approached this Court by way of filing the present writ petition.

In such situation and circumstances, as this writ petition involves several disputed question of facts and is pending since 2002, therefore, after lapse of five years, I do not find any merit in the writ petition. Although the petitioner, at this stage, wants to avail the alternative efficacious remedy to redress his grievance.

In the interest of justice, I accept the request of the petitioner. The petitioner can avail the

alternative efficacious remedy available to him and the bonafide time consumed in filing this writ petition, shall not come in the way for the purpose of limitation and in case the petitioner raises the dispute before the competent authority within a period of one month from the date of passing of this order, such dispute shall be considered within the period of limitation.

Consequently, the writ petition fails and the same is hereby dismissed.

(K.S. RATHORE),J.

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